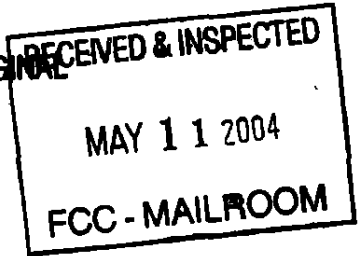


Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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In the Matter of )  
 )  
Amendment of Section 73.606(b) )  
Table of Allotments )  
Television Broadcast Stations )  
(Columbia and Edenton, NC) )  
and )  
Amendment of Section 73.622(b) )  
DTV Table of Allotments )  
Television Broadcast Stations )

MB Docket No. \_\_\_\_\_  
RM- \_\_\_\_\_

To: Chief, Allocations Branch  
Policy & Rules Division  
Media Bureau

**RESPONSE TO HAMPTON ROADS EDUCATIONAL  
TELECOMMUNICATIONS ASSOCIATION, INC.'S OPPOSITION**

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### **Summary**

Hampton Roads' Opposition should be rejected, and UNC's Petition should be placed on public notice for comment. UNC's Petition seeks to provide its programming to all viewers within its Grade B contour by harmonizing satellite carriage of WUND with its cable carriage and over-the-air viewing pattern. UNC's proposal is entirely consistent with Commission rules and policy, furthers the public interest by increasing the public's viewing choices and causes no negative impact in or to its current community of license, Columbia, North Carolina.

UNC's Petition presents circumstances that, according to UNC's research, the Commission has not previously addressed. Hampton Roads' Opposition fails to address the unique circumstances set forth in the Petition and relies instead on a rigid application of the allotment priorities, which the Commission has previously rejected. As discussed in UNC's Petition, the public interest factors present in this case support the change in community of license. Because the community of license change would allow UNC to avail itself of DBS carriage in the Tidewater Market, all television households in WUND's service area would be able to receive WUND's programming, irrespective of whether they elect to receive their television service from a cable operator, a satellite operator, or free off-the-air.

WUND is an important link in the UNC television network, and the proposed change in community of license to Edenton, North Carolina would further WUND's mission as an important link to the entire northeastern portion of North Carolina because it would allow DBS subscribers who cannot currently receive UNC's unique, valuable, diverse programming via satellite to receive it. In short, UNC's proposed change in community of license is in furtherance of the precise public

interest—providing valuable educational and public affairs programming to the northeastern corner of North Carolina—that led the Commission to grant UNC’s petition for WUND nearly 30 years ago.

Hampton Roads’ argument regarding “communities” fails to acknowledge the significant changes have occurred since 1964: Columbia is now 25% smaller than it was when Channel \*2 was allotted to it 40 years ago, and Edenton continues to grow, and DBS service has evolved, including the Congressionally mandated scheme of satellite carriage of public stations.

The offering to viewers of additional program choices is, plainly, in the public interest. The Commission has proclaimed that “the widest possible dissemination of educational and public television programming is clearly of public benefit and should not be restricted.” The Commission does not regulate the fundraising practices of non-commercial broadcasters and does not engage in economic protectionism of the fundraising of one station over another. Hampton Roads’ Opposition, by arguing for the denial of the Petition on the basis that viewers may prefer the programming of WUND to that of WHRO-TV and consequently be inclined to support UNC to the detriment of Hampton Roads, is requesting the Commission to make an unprecedented foray into the regulation of fundraising by suppressing access to programs to protect WHRO-TV. Put another way, Hampton Roads is asking the Commission to deny viewers in its DMA access to additional public broadcasting programming—a result, if approved, that would be directly at odds with all Commission case precedent and with fundamental national telecommunications policy objectives.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.606(b)	)	
Table of Allotments	)	
Television Broadcast Stations	)	MB Docket No. _____
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DTV Table of Allotments	)	
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To: Chief, Allocations Branch  
Policy & Rules Division  
Media Bureau

**RESPONSE TO HAMPTON ROADS EDUCATIONAL  
TELECOMMUNICATIONS ASSOCIATION, INC.'S OPPOSITION**

The University of North Carolina ("UNC"), licensee of Non-Commercial Television Stations WUND-TV, Columbia, North Carolina, Channel 2, and WUND-DT, Channel 20 (collectively "WUND"), by its counsel, hereby responds to the Opposition of Hampton Roads Educational Telecommunications Association, Inc. ("Hampton Roads") to UNC's Petition for Rulemaking ("Petition").<sup>1</sup>

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<sup>1</sup> UNC filed its Petition in July 2003. To date, the Petition has not been placed on public notice, and UNC has been unable to ascertain whether a docket number or rulemaking number has been assigned to the Petition. While Hampton Roads' Opposition indicates that the Petition has been assigned Docket No. 03-224 and RM-10802, those numbers appear to have been assigned to a different rulemaking, *In the Matter of Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, and Section 73.622(b), Table of Allotments Digital Television Broadcast Stations (Knoxville, Tennessee)*, Notice of Proposed Rule Making, DA 03-3345 (Rel. Oct. 27, 2003), which is currently the subject of public comment.

**I. Hampton Roads' Opposition Is an Unauthorized Pleading and Should Be Dismissed, or, at Most, Considered with Timely Filed Comments After the Petition Is Put on Public Notice**

Hampton Roads acknowledges that UNC's Petition has not been placed on public notice.<sup>2</sup> Consequently, the Opposition is an unauthorized pleading that the Commission should summarily dismiss, or, at most, consider as "comments" after UNC's Petition is placed on public notice.

Moreover, Hampton Roads' Opposition is untimely, notwithstanding its representations to the contrary.<sup>3</sup> Commission Rule Section 1.45(b) requires "[o]ppositions to *any* . . . petition . . . [to] be filed within 10 days after the original pleading is filed."<sup>4</sup> UNC's Petition fits the category of "any petition" and was filed July 31, 2003; therefore, any opposition to the Petition would have had to have been filed by Monday, August 11, 2003. Hampton Roads' Opposition was filed December 19, 2003, some four months late. For that additional reason, the Opposition should be dismissed.

**II. Argument**

In Hampton Roads's own words, it opposes UNC's Petition because:

UNC's proposal is squarely inconsistent with the FCC's rules and policies. It is a blatant grab for viewers and funding in Hampton Road's [sic] market at the expense of local transmission service in WUND-TV's city of license.<sup>5</sup>

As demonstrated below and contrary to Hampton Roads' assertion, UNC's proposal is neither "inconsistent with the FCC's rules and policies" nor a "blatant grab for viewers and funding . . . at

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<sup>2</sup> See Opposition, at 1 n.2.

<sup>3</sup> See Opposition, at 1 n.2.

<sup>4</sup> 47 C.F.R. § 1.45(b) (emphasis added).

<sup>5</sup> Opposition, at 1. Hampton Roads fails to cite a single Commission *rule* which UNC's Petition violates.

the expense of local transmission service.” To the contrary, UNC’s Petition seeks to provide its programming to all viewers within its Grade B contour by harmonizing satellite carriage of WUND with its cable carriage and over-the-air viewing pattern.<sup>6</sup> By doing so, all viewers in WUND’s Grade B contour would receive WUND’s programming irrespective of their access to cable service (which is unavailable in many of the sparsely populated rural areas of northeastern North Carolina) or election to choose to receive programming over-the-air or via satellite. As such, UNC’s proposal is entirely consistent with Commission rules and policy, furthers the public interest by increasing the public’s viewing choices—especially in rural areas—and causes no negative impact in or to its current community of license, Columbia, North Carolina.

**A. UNC’s Petition Is Consistent with Commission Rules and Policies, and Hampton Roads’ Opposition Seeks the Inappropriately Rigid Application of the Flexible Allotment Priorities and Elevates Form over Substance**

Hampton Roads points out, correctly, that a change in the community of license of WUND from Columbia to Edenton would remove Columbia’s sole television transmission service. Hampton Roads neglects the critical fact, however, that the so-called “removal” of Columbia’s sole transmission service represents a removal on paper only, as the *only* changes at issue are the redesignation of WUND’s channels from assignment to Columbia to nearby Edenton. Of course, UNC noted precisely these facts in its Petition.<sup>7</sup>

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<sup>6</sup> Should UNC’s Petition be granted, WUND will qualify for DBS carriage in the Tidewater Market. Retransmission of local stations by satellite was authorized by Congress to give satellite subscribers the same access to local broadcast stations as cable subscribers have long enjoyed. *See* 47 U.S.C. § 338. Hampton Roads’ Opposition to the Petition on the grounds that satellite carriage of WUND would result in WUND’s competition with WHRO-TV for viewers and support is essentially a collateral attack on the Congressionally authorized satellite carriage scheme.

<sup>7</sup> Petition, at 7-9.

In support of its argument that, on this basis, the Commission should deny UNC's Petition without inviting public comment, Hampton Roads cites *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (North Pole and Plattsburgh, New York)*, Notice of Proposed Rulemaking, DA 99-1235 (Rel. July 2, 1999) ("*North Pole*"). Hampton Roads argues that *North Pole* stands for the principle that the

Commission has occasionally found sufficient cause to change a station's community of license when the licensee is the sole station in the community, but these occasions have been extraordinarily few in number and only in circumstances where the status quo was clearly frustrating the Commission's overall public policy goals.<sup>8</sup>

But *North Pole* has not been resolved and remains pending at the Commission, a status which not only undermines its precedential value in terms of substantive law, but also, to the contrary, clearly stands for the procedural precedent of putting UNC's Petition on public notice and soliciting comments. In fact, *North Pole* plainly stands for the proposition that community of license petitions based on unique circumstances should *proceed* to public notice so that interested parties may have an opportunity to comment in a rulemaking. Accordingly, the Commission should reject Hampton Roads' premature attempt to reject UNC's Petition earlier in the process, i.e., before the issuance of a public notice.

Hampton Roads also cites the *Bessemer*<sup>9</sup> case, stating:

UNC notes that it would not alter the location of the station's studios or transmitter, currently located on the border of Washington and Tyrell counties. However, this argument flies in the face of the Commission's long-standing policy, and is directly contradicted by the cases UNC cites. For example, in the *Bessemer* case, cited

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<sup>8</sup> Opposition, at 3-4.

<sup>9</sup> *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Bessemer and Tuscaloosa, Alabama)*, Report and Order, 5 FCC Rcd 669 (Rel. Feb. 5, 1990) ("*Bessemer*").



numerous times by UNC, the Commission dealt with nearly the same situation as presented by UNC's petition. There, the Commission denied the request of a licensee seeking a change to its community of license while leaving its transmission tower and studio in the same place. The Commission stated in unambiguous terms that the community at issue in *Bessemer* possessed "a legitimate expectation of continued local transmission service."<sup>10</sup>

To be sure, UNC's Petition does cite *Bessemer*, but the Petition does not rely on *Bessemer* as precedent in the instant case.<sup>11</sup> Rather, the Petition cites *Bessemer* for the critical, unambiguous principle that "'television allotment priorities are *not rigidly applied*.'"<sup>12</sup> Hampton Roads conveniently ignores this aspect of *Bessemer* and argues instead for a rigid application of the Commission's allotment priority policy.<sup>13</sup>

Hampton Roads' failure to address the unique circumstances set forth in the Petition—relying instead a rigid application of the allotment priorities, which the Commission, itself, has rejected—is telling. In so doing, Hampton Roads elevates form over substance. Hampton Roads provides no authority to support its argument that UNC's Petition should be dismissed without being placed on public notice, and the cases Hampton Roads does cite—*North Pole* and *Bessemer*—involved petitions that, in fact, *were* put on public notice.

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<sup>10</sup> Opposition, at 4 (footnote and emphasis omitted) (quoting *Bessemer*, at ¶ 14).

<sup>11</sup> *Bessemer* is readily distinguished from the instant case on the basis of the application of the *Huntington* doctrine—in *Bessemer*, application of the *Huntington* doctrine was determinative of the outcome of the petitioner's proposal (*Bessemer*, ¶¶ 12-13); in the instant case, the *Huntington* doctrine is not applicable, let alone determinative.

<sup>12</sup> Petition, at 3 (quoting *Bessemer*, at ¶ 14) (emphasis added).

<sup>13</sup> Hampton Roads also ignores the clear statement in the 1990 MO&O, which explicitly acknowledged that, under certain circumstances, the Commission will consider removal of a sole transmission service from a community. See *infra* note 14 and accompanying text.

**B. The Public Interest Clearly Favors UNC's Proposed Change in Community of License**

Hampton Roads incorrectly characterizes UNC's Petition in stating:

UNC's reliance on the 1990 MO&O for the proposition that removal of a sole service is at least possible fails to acknowledge that such removals will be granted "only if there are sufficient public interest facts to offset the expectation of continued service."<sup>14</sup>

Notwithstanding Hampton Roads' representation to the contrary, UNC's Petition clearly and directly discusses the public interest factors supporting the change in community of license, and UNC itself cites the same passage of the Commission's 1990 Order quoted in the Opposition.<sup>15</sup> As for the "expectation of continued service," UNC's Petition addresses that issue squarely and directly, observing that both reliance by the public and reception service would be unaffected by the proposed change in community of license.<sup>16</sup> UNC's Petition summarizes the public interest factors succinctly: "On the one hand, then, a change in community of license from Columbia to Edenton is an administrative change only in name. On the other hand, however, it is a change with significant, positive viewership effects."<sup>17</sup>

To reiterate, a change in WUND's community of license would harmonize DBS carriage of WUND's programming with cable carriage. This would allow all television households in WUND's

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<sup>14</sup> Opposition, at 5 (quoting *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990) ("1990 MO&O"), at ¶ 19). Of course, Hampton Roads' citation to paragraph 19 of the 1990 MO&O directly contradicts its argument that the allotment priorities are to be rigidly applied.

<sup>15</sup> See Petition, at 7 (citing 1990 MO&O, at ¶¶ 16-20).

<sup>16</sup> See Petition, at 8-9.

<sup>17</sup> Petition, at 9.

service area to receive WUND's programming, irrespective of whether they elect to receive their television service from a cable operator, a satellite operator, or free off-the-air. Finally, *Bessemer* is again instructive. Hampton Roads claims that in the *Bessemer* case, the Commission "dealt with nearly the same situation as presented by UNC's petition."<sup>18</sup> There are similarities between UNC's Petition and that propounded in *Bessemer*—both petitioners sought to provide the first local television service to a new community, and neither station planned to move its transmission or studio facilities. However, in *Bessemer*, the Commission's decision was based on a careful analysis of the public interest and particular facts presented. It was significant to the *Bessemer* decision that "approval of the change in community of license would provide no additional reception service."<sup>19</sup> That, of course, is not true for UNC. UNC's change in community of license would only add viewers, while no household would lose UNC's service. As such, the Petition is clearly in the public interest.

The change in community of license would result in no loss of service to any television household since WUND's transmission facilities would remain precisely where they are at present, and cable carriage would be unaffected. At the end of the day, the Opposition refutes none of the public interest factors cited in the Petition and provides no basis whatsoever for concluding that the public interest would not be served by a grant of UNC's Petition.

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<sup>18</sup> Opposition, at 4.

<sup>19</sup> *Bessemer*, at ¶ 14.

**C. Hampton Roads' Opposition Is Contrary to the Public Interest Because It Seeks to Suppress Program Diversity and Deny Viewers Access to UNC's Programming**

The programming aired on WUND is rich and diverse, and offers important opportunities for viewers in the far reaches of northeastern North Carolina to secure timely news and public affairs programming on North Carolina's state government. Many of these programs are specific to North Carolina, are important to the residents of northeastern North Carolina, and are not offered by Hampton Roads' Virginia station WHRO-TV. Hampton Roads has not argued that WUND's programming significantly duplicates the programming of WHRO-TV, and, in fact, it does not.

In the Opposition's "Background" section, Hampton Roads states:

UNC petitioned for the channel to be allotted to Columbia because that community would serve as "an important link in [the then-proposed] state-wide educational television network." The Commission noted when it granted UNC's request that the placement of the channel in Columbia would "meet a real need as a source of educational programming for both schools and the general public" in that community. Similarly, the Commission noted with approval that granting the requested allotment to Columbia would make possible the community's first and only local television station.<sup>20</sup>

By carefully omitting to quote an important and relevant portion of that 1964 Commission decision, however, Hampton Roads avoids the full flavor of the original channel allotment:

Petitioner's proposed Channel \*2 would serve this community *and the surrounding area* as an important link in a proposed state-wide educational television network.<sup>21</sup>

In fact, to this day, WUND continues to serve as an important link in the UNC television network; and the proposed change in community of license to Edenton, North Carolina would further

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<sup>20</sup> Opposition, at 2 (footnotes omitted) (alteration in original) (quoting *In the Matter of Amendment of § 73 606, Table of Assignments, Television Broadcast Stations (Columbia, North Carolina)*, Docket No. 15227, RM-437, 29 Fed. Reg. 4721 (Apr. 2, 1964) ("RM-437")).

<sup>21</sup> RM-437, at ¶ 3 (emphasis added).

WUND's mission as an important link to the entire northeastern portion of North Carolina—i.e., *Columbia and the surrounding area*—because it would allow DBS subscribers who cannot currently receive UNC's unique, valuable, diverse programming via satellite to receive it. In short, UNC's proposed change in community of license is in furtherance of the precise public interest—providing valuable educational and public affairs programming to the northeastern corner of North Carolina—that led the Commission to grant UNC's petition for WUND nearly 30 years ago.

As the Commission has observed in many contexts, the offering to viewers of additional program choices is in the public interest. Significantly, in the context of developing its cable carriage rules and addressing concerns of non-commercial television stations relating to the importation of distant non-commercial television stations, the Commission proclaimed that “the widest possible dissemination of educational and public television programming is clearly of public benefit and should not be restricted.”<sup>22</sup> When later liberalizing its cable distant signal carriage rules, the Commission re-emphasized the point:

Although there are many differences between the commercial and public stations relating to possible impacts resulting from cable distant signal carriage, we do not believe these weigh in favor of more restrictive regulation with respect to carriage of public stations. Rather, we believe that the policy of encouraging the *widest possible dissemination of public television station programming should be further encouraged* by a liberalization of our rules which act to restrict carriage of non-commercial stations in markets where objections are filed.

Because these stations are so heavily dependent on tax revenues, it seems to us that we should be *especially cautious in denying citizens as much access to their output as possible*. Although perhaps ultimately justifiable if necessary for the preservation of the public television system itself, it is anomalous for government, and particularly the federal government, to contribute toward the creation of a system

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<sup>22</sup> *In the Matter of Amendment of Section 74.1031(c) and 74.1105(a) and (b) of the Commission's Rules and Regulations as they Relate to Addition of New Television Signals*, Cable Television Report and Order, 36 F.C.C. 2d 143 (1972), at ¶ 95.

of public television as an alternative source of diverse programming to that supplied by the commercial stations while at the same time restricting the public's access to *additional sources* of the programming created by the system.<sup>23</sup>

A grant of UNC's Petition would encourage the "widest possible dissemination of public television programming" from "additional sources."

Indeed, UNC's research has revealed no case—and Hampton Roads cites none—in which the Commission has suppressed additional viewer programming choices in an attempt to protect the underwriting dollars of another non-commercial station.<sup>24</sup> The Commission has observed that non-commercial broadcasters themselves "contend that audience reaction to appeals for money . . . automatically places limits on the amount of time devoted to this type of fund-raising and serves as

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<sup>23</sup> *Cable Television Syndicated Program Exclusivity Rules; Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television*, Report and Order, Appendix C, "A Case Study Analysis of Non-Commercial Television Stations in Grandfathered Markets," at ¶¶ 14-15 (emphases added). The "objections" referenced by the Commission were those that could be filed by non-commercial stations that felt threatened by the addition of another non-commercial television distant signal to a cable system.

<sup>24</sup> In fact, the Commission appears never to have considered the question of non-commercial stations "competing" among themselves for viewer support and underwriter dollars, though it has found "no reason or evidence to suggest that viewer contributions to local non-commercial stations will decrease because of importation of distant signals." *Cable Television Syndicated Program Exclusivity Rules; Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television*, Report and Order, Appendix C, "A Case Study Analysis of Non-Commercial Television Stations in Grandfathered Markets," at ¶ 6. The Commission did consider, and reject outright, the notion that it is unfair for non-commercial television stations to "compete" with commercial stations for corporate money, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, First Report and Notice of Proposed Rulemaking, 69 FCC 2d 200 (Rel. July 17, 1978), ¶ 36, and the same logic applies, *a fortiori*, to competition for funds among non-commercial stations. To the extent the competition for underwriting and viewer support by non-commercial stations is an issue generally worthy of Commission consideration, the instant change in community of license proceeding is clearly not the appropriate forum for resolving such a novel issue.

an adequate check against abuse.”<sup>25</sup> Thus, aside from policing fundraising practices that cross the line into “commercial” promotion, the Commission does not regulate the fundraising practices of non-commercial broadcasters—and, *a fortiori*, does not engage in economic protectionism of the fundraising of one station over another. Hampton Roads’ Opposition, by arguing for the denial of the Petition on the basis that viewers may prefer the programming of WUND to that of WHRO-TV and consequently be inclined to support UNC to the detriment of Hampton Roads, is requesting the Commission to make an unprecedented foray into the regulation of fundraising by suppressing competition to protect WHRO-TV.<sup>26</sup> Nothing would seem to be more at odds with the public interest.

As quoted above, the lone circumstance in which the Commission has acknowledged that it would even contemplate “restricting the public’s access to additional sources” of non-commercial programming is where such a restriction would be necessary for “the preservation of the public television system itself.” Because Hampton Roads does not argue—and could not argue—that even the most remote and attenuated effects resulting from a change in WUND’s community of license from Columbia to Edenton would undermine the preservation of the public television system itself,

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<sup>25</sup> *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, First Report and Notice of Proposed Rulemaking, 69 FCC 2d 200 (Rel. July 17, 1978) (“*First Report*”), at ¶ 54.

<sup>26</sup> In any event, at least one study has shown that “a reduction in the number of viewing hours of non-commercial stations does not imply necessarily a reduction in viewer contributions or revenues for those stations” and that “audience size is not the sole determinant of revenues for non-commercial stations.” *Cable Television Syndicated Program Exclusivity Rules; Inquiry into the Economic Relationship Between Television Broadcasting and Cable Television*, Report and Order, Appendix C, “A Case Study Analysis of Non-Commercial Television Stations in Grandfathered Markets,” at ¶¶ 1, 12.

its arguments relating to predation and “siphon[ing] off viewers and funding”<sup>27</sup> are wholly without merit. Consequently, the Opposition must be dismissed.

It has been recognized that “fund-raising practices var[y] considerably from licensee to licensee,”<sup>28</sup> and UNC will, as it has in the past, attempt to raise revenues from all the viewers it serves—including its viewers within WUND’s Grade B contour, and those who receive WUND via cable or satellite throughout the Albemarle Sound Region, northeastern North Carolina, and southeastern Virginia. A grant or denial of the Petition would not cause UNC to contemplate making any changes to its current fundraising activities.

**D. Hampton Roads’ Arguments Regarding “Community” Are Much Ado About Nothing**

The Opposition goes to considerable length to address whether and to what extent Columbia, Edenton, or the Albemarle Sound region are “communities” for purposes of Section 307(b) of the Communications Act.<sup>29</sup> In the end, however, these arguments are much ado about nothing. UNC’s Petition acknowledges that “Columbia and Edenton . . . each individually possess the indicia of ‘community’ for allotment purposes.”<sup>30</sup> Hampton Roads’ Opposition simply provides further

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<sup>27</sup> Opposition, at 3. Hampton Roads’ suggestion that community support is critical to its operations but not crucial to UNC’s survival and ability to serve the public interest, *see* Opposition, at 3, is unsupported and incorrect. The ability of any broadcast station to serve the public interest is, by definition, rooted in the viewers it serves, and stations best serve the public interest when they are responsive to the needs and desires of those viewers.

<sup>28</sup> *First Report*, at ¶ 54.

<sup>29</sup> *See* Opposition, at 5-8.

<sup>30</sup> Petition, at 5.



evidence to support UNC's acknowledgment of the two cities' "community" status while citing, *inter alia*, a number of commercial *FM* allotment cases decided prior to the Commission's 1990 Order.

But the issue of whether or to what extent Columbia, Edenton, or the entire Albemarle Sound region are communities is not one which should result in rejection of UNC's Petition prior to its being placed on public notice—nor should it prevent the Petition from being granted. In fact, Hampton Roads takes the position that Edenton is a community for Section 307(b) purposes—a position which would counsel in favor of putting the Petition on public notice and granting it.

Additionally, UNC's Petition did not suggest, as the *sine qua non* of the proposal to change the community of license, that the Albemarle Sound is "a unifying feature"<sup>31</sup> of the counties that surround it—UNC simply chose to use the nomenclature of the Albemarle Sound Region because it is an appropriate and recognized shorthand for referring to the northeastern section of North Carolina which includes the counties surrounding the Albemarle Sound. Nevertheless, Hampton Roads goes to great—albeit irrelevant—lengths to describe the regional "community" on its own terms:

Going further, if the Commission were to find a large regional "community" encompassing Edenton, that community would look to the north—to the Tidewater area which is served by WHRO-TV, not to the south, across the expanse of Albemarle Bay. During a period in which North Carolina taxes remain significantly lower than Virginia taxes, and the cost of living is less, there is a substantial movement of Virginia citizens to live and retire in areas such as Edenton, which are just below the Virginia/North Carolina border. These people continue to shop in Virginia, and many continue to work in Virginia. In essence, the northeastern part of North Carolina above the Albemarle Sound is being annexed to the urban areas of the Tidewater market, rather than to the areas (including Columbia) south of the Albemarle Sound.<sup>32</sup>

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<sup>31</sup> Opposition, at 6.

<sup>32</sup> Opposition, at 7 n.22.

If these statements were true<sup>33</sup>—and they are not—they actually favor grant of UNC’s Petition: the northeastern part of North Carolina and the southeastern corner of Virginia comprise a community that is already served by WUND’s over-the-air Grade B signal and cable carriage, and the proposed change in community of license would allow the harmonization, within this regional community, of WUND’s signal via satellite carriage with its current cable carriage and over-the-air signal pattern to provide diverse public affairs programming addressing important North Carolina issues that is not available on WHRO-TV.

Moreover, UNC’s Petition does not, as the Opposition suggests, “argue[] that removal of the WUND-TV allotment is justified because Columbia is inadequate in size to serve as the station’s community.”<sup>34</sup> UNC’s Petition does correctly point out that Edenton is growing and Columbia is shrinking. Hampton Roads does not dispute those facts. In fact, Columbia is now 25% smaller than it was when Channel \*2 was allotted to it 40 years ago.<sup>35</sup> Edenton, in contrast, continues to grow.<sup>36</sup>

Nor does UNC “argue[] that because it is a public educational institution, the policy against a station abandoning its home community in order to chase after a larger one does not apply . . . [or]

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<sup>33</sup> At no time has UNC argued that the northeastern part of North Carolina north of the Albemarle Sound is being annexed to areas south of the Albemarle Sound. By the same token, UNC—and probably the North Carolina General Assembly—would be surprised to learn that portions of North Carolina are being “annexed” to Virginia. *See generally* U.S. Const. Art. IV, § 3, cl.1.

<sup>34</sup> Opposition, at 7.

<sup>35</sup> *Compare* RM-437, at ¶ 3 (noting Columbia’s 1960 population of 1,099) *with* Petition, at 6 (noting Columbia’s population of 819).

<sup>36</sup> *See* Petition, at 6-7.

that noncommercial stations are somehow exempt.”<sup>37</sup> UNC cited paragraph 17 of the *1989 R&O*<sup>38</sup> only to reassure the Commission that its proposal does not seek the type of “commercial” gain that appeared to concern some parties in the *Community of License Rulemaking* in cases where a licensee might seek to move from a rural area to serve “large urban areas.”

It is indisputable that, since 1964, (1) the populations of both Columbia and Edenton have changed, (2) DBS service has evolved, including the Congressionally mandated scheme of satellite carriage of public stations, and (3) highway access to northeastern North Carolina has improved, which has greatly facilitated access to portions of the state that were previously more difficult to reach. Thus, Hampton Roads’ suggestion that there have been no significant changes since the original assignment of Channel 2 to Columbia is erroneous.<sup>39</sup>

### **Conclusion**

For the foregoing reasons and for the reasons stated in UNC’s Petition, UNC respectfully requests that the Commission put the Petition on public notice and, ultimately, (1) amend the Table of NTSC Television Allotments, Section 73.606(b) of the Commission’s Rules, by changing the community of license of Channel 2, Columbia, North Carolina to Edenton, North Carolina; and (2) amend the DTV Table of Allotments (47 C.F.R. § 73.622(b)) by changing the community of license of Channel 20, Columbia, North Carolina, to Channel 20, Edenton, North Carolina.

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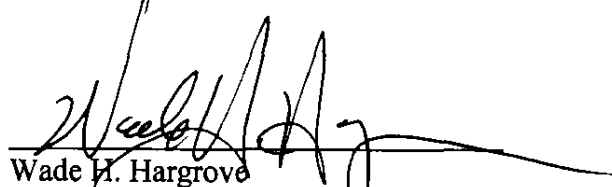
<sup>37</sup> Opposition, at 9.

<sup>38</sup> *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) (“*1989 R&O*”).

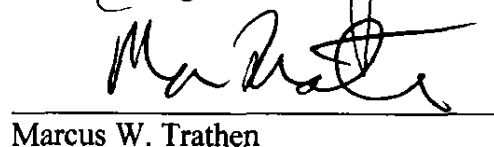
<sup>39</sup> See Opposition, at 7.

Respectfully submitted,

**THE UNIVERSITY OF NORTH CAROLINA**



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May 6, 2004

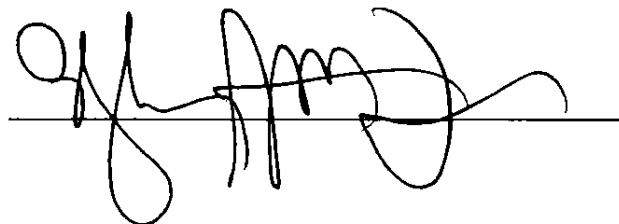
### Certificate of Service

The undersigned, of the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., hereby certifies that s/he has caused a copy of the foregoing **Response to Hampton Roads Educational Telecommunications Association, Inc.'s Opposition** to be placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

Todd Gray  
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Barbara Kreisman, Chief  
Video Division, Media Bureau  
Federal Communications Commission  
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This the 10<sup>th</sup> day of May, 2004.

A handwritten signature in black ink, appearing to be "Todd Gray", written over a horizontal line.